IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8807 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHWIN D MEHTA HUF

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR SN SOPARKAR for Petitioner

MR BB NAIK WITH MR MANISH R BHATT for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE J.N.BHATT

and

MR.JUSTICE C.K.BUCH

Date of decision: 15/02/2000

ORAL JUDGEMENT (PER : J.N.BHATT, J)

The only question which crops up for consideration in this petition under Article 226 of the Constitution of India is whether order under sec. 241 of the Income Tax Act, 1961 withholding the amount of refund of Rs. 7,57,660/- till the decision of appeal before the Income Tax Appellate Tribunal, at the instance of Revenue, passed on 11.9.1995 pursuant to the direction contained in our decision recorded in Spl.Civil Application No. 1719/95 dated 6.4.1995, is in any way, vulnerable.

2. After having heard learned Counsel Mr. S.N. Soparkar for the petitioner and learned Counsel Mr. B.B. Naik for learned Central Government Counsel Mr. M.R. Bhatt for the respondents and considering the context and tenor of the impugned order under sec.241 of the Income Tax Act,1961, we are of the opinion that the petition merits rejection. Authority has assigned reasons in the impugned order in support of withholding the amount of refund till the decision of the appeal pending before the Income Tax Appellate Tribunal under sec.241 of the Income Tax Act, 1961, unlike the one which was challenged before us in Special Civil Application No.1719/95. Again, the petition is of 1995 and it must be at an advanced stage for final hearing.

3. In the facts and circumstances, and the grounds stated in the impugned order and the purport and design of the provisions of sec. 241 of the Income Tax Act, 1961, this petition deserves to be rejected. Accordingly, it is rejected at this stage. Rule is discharged. No order as to costs. However, it is observed that Income Tax Appellate Tribunal will hear the pending appeal as expeditiously as possible so that amount of refund for which the petition came to be filed, could also be finalised early. It will be open for the petitioner to move for early hearing of the appeal before the Tribunal.

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